

REMARKS

Claims 60 - 96 are pending, with claims 68 - 96 withdrawn from consideration. Claims 60 and 66 are being amended herein, and claims 63, 65, and 67 are being canceled without prejudice to their reintroduction into this or one or more timely filed continuation, divisional or continuation-in-part applications. Thus, after entry of this Amendment, claims 60-62, 64, and 66 are pending and under consideration. The amendments to the claims and the various rejections raised in the Office Action are discussed in more detail below.

Objections to the specification

Applicants acknowledge that the Examiner has objected to the specification's general reference to the XL Fit software program, and are seeking specific version information; the specification will be amended when this information becomes available.

Restriction requirement

Applicants had understood from the restriction requirement mailed October 19, 2005 that the following subject matter would be examined upon election of Group I:

an isolated polynucleotide and derivatives thereof, a method for expressing a polynucleotide, a genetically modified host cell, a method for expressing a polypeptide, and an immunogenic composition.

Based upon a discussion with the Examiner, applicants' attorney of record had further understood that Group I would also include claims drawn to isolated polypeptides and fusion proteins, as had been recited in then-pending claims 31-36.

In the instant action, however, the Examiner has withdrawn all claims except those drawn to isolated polypeptides and fusion proteins.

Applicants request that the Examiner specify on the record whether claims to isolated polypeptides and fusion proteins are drawn to a restriction group distinct from Groups I - VI as earlier set forth in the restriction requirement

mailed October 19, 2005 or, in the alternative, clarify that such claims are properly grouped within restriction Group I. If indeed claims to polypeptides and fusion proteins are properly within Group I, applicants request that the Examiner rejoin the withdrawn claims and examine these latter claims on the merits.

The Amendments of the Claims

Claims 60 and 66 have been amended to particularly claim isolated polypeptides comprising full-length proteins. No new matter is added by virtue of the amendments.

Withdrawn claims 68, 70, 71, 73, 74 and 86 are also amended herein, in a fashion consistent with amendment to claims 60 and 66, should the Examiner choose to define restriction Group I to include the presently withdrawn claims.

Rejection Under 35 U.S.C. § 102

Claims 60 - 67 stand rejected under 35 U.S.C. § 102 as being anticipated by May *et al.*, 2001, "Complete Genomic Sequence of *Pasteurella multocida*, Pm70," *Proc. Natl. Acad. Sci. USA* 98(6):3460-3465 ("May *et al.*"). Specifically, the Patent Office alleges that May *et al.* disclose an isolated polypeptide of 222 amino acids that has 71.2% sequence identity when aligned with the entirety of applicants' BASB231 protein SEQ ID NO:2, and further includes regions of 100% identity to regions of applicants' presently claimed protein.

Applicants respectfully submit that the rejection has been obviated by amendment.

Provisional Rejection For Obviousness-Type Double Patenting

Claims 60 - 67 stand provisionally rejected over applicants' copending application no. 10/484,156 (the '156 application).

The Examiner has not identified protein sequences in the '156 application that would have rendered obvious the presently claimed subject matter. The provisional obviousness-type double patenting rejection is in error and should be withdrawn.

Rejections Under 35 U.S.C. § 112, First Paragraph, Written Description

The Examiner rejects claims 60 - 67 under 35 U.S.C. § 112, ¶ 1, for inadequate written description.

Applicants respectfully submit that amendment to independent claim 60 obviates the rejection as applied to claims 60 - 62, drawn to isolated polypeptides, the genus being now clearly delimited to species that have 99% sequence identity to SEQ ID NO:2.

With respect to claims 64 and 66, drawn to isolated fusion proteins, applicants respectfully submit that dependency directly or indirectly through amended claim 60 ensures full compliance with § 112 as to the BASB moiety of the fusion, and further submit that the specification describes an adequate number of fusion moieties as to provide an adequate written description of the genus as claimed, *Capon v. Eshhar*, 418 F.3d 1349, 1360-61 (Fed. Cir. 2005) (as to chimeric genetic constructs, "the Board erred in ruling that § 112 imposes a per se rule requiring recitation in the specification of the nucleotide sequence of claimed DNA, when that sequence is already known in the field.).

Rejections Under 35 U.S.C. § 112, First Paragraph, Enablement

Claims 60 - 67 stand rejected under 35 U.S.C. § 112, ¶ 1, for lack of enablement. Applicants respectfully submit that the rejection has been obviated by amendment.

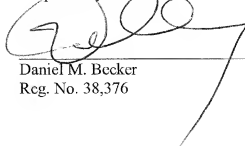
Conclusion

Claims 60-62, 64, and 66 are believed to satisfy all of the criteria for patentability and are in condition for allowance. An early indication of the same is therefore kindly requested.

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Respectfully submitted,



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